

**MINUTES**  
**LIVESTOCK FACILITY SITING REVIEW BOARD**  
**MEETING**  
**November 21, 2008**  
**Boardroom 106, 2811 Agriculture Drive, Madison, WI**

Vice-Chair Johnson chaired today's meeting and called it to order at 10:07 a.m. Other LFSRB members present were Jim Holte (by phone), Fran Byerly (by phone), Lee Engelbrecht, Bob Selk, Bob Topel, and Jerry Gaska. A quorum was present. DATCP staff present were Cheryl Daniels and Lori Price.

**Call to order**

Johnson stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Engelbrecht moved to approve the agenda, and Gaska seconded the motion. The motion passed.

Johnson presented the September 19, 2008, meeting minutes for approval. Gaska made a motion to approve the minutes as written, and Selk seconded the motion. The motion passed.

***Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01, circuit court case status—Cheryl Daniels, DATCP***

Daniels reported that the status of this case has not changed since her last report, and she is still waiting on the Circuit Court Judge's decision. She will send a copy of the petitioner's reply brief to the board members once she receives it from Bob Hunter.

***Van Dyke v. Racine County, Docket No. 08-L-02: case review process, identification of issues on appeal, discussion, LFSRB decision, and set date for LFSRB signoff of final written decision on case—Andy Johnson***

Johnson reported that Racine County properly approved a livestock siting zoning ordinance that is consistent with Wisconsin Statute 93.90 and ATCP 51. The ordinance does not go beyond the limits or authorities of ATCP 51. The request for review sent by Van Dyke met the requirements for appeal and submittal to the LFSRB. Daniels sent out the request for the county record of decision making, and the board received the record in early November. The board has until early January to publish its final decision in this case. Gaska asked about the local government's minutes from the June public hearing that were missing from the record. Daniels responded that the June hearing was not properly noticed to the public so the county may have chose not to include them as part of the record since another public hearing, which was properly noticed, took place in August. Johnson continued that the board will review if the challenge to the county decision is valid based on the record of decision making.

Before the board determined if the challenge was valid, they identified the issues on appeal as the adequacy of the nutrient management plan, specifically does the application contain sufficient information and documentation to demonstrate compliance with the nutrient management standards. The board began the discussion by noting that there was an inconsistency in the number of acres

available for manure spreading listed in the application and the number of acres listed for spreading in the nutrient management plan. While the number of acres listed in the nutrient management plan was sufficient for the current number of animal units at the facility, that number was not sufficient for the proposed expansion. The board members could not locate anywhere in the record, other than what was mentioned in the application, proof of the total acreage needed for spreading to meet the proposed expansion. The board members reviewed in its *Ronald S. Stadler v. Crawford County* decision that the number of acres for manure disposal matched the maximum number of animal units, and that decision reflected the statutory framework for livestock siting. The board members also discussed the fact that the county granted the permit knowing that the acreage available for spreading was insufficient, but that the county does have the option to review the nutrient management plan as expansion occurs and possibly deny the permit if it doesn't meet the ordinance. Some of the board members expressed concern on whether the county would fulfill this monitoring duty and whether the importance of the nutrient management plan might be lessened if the LFSRB agrees with this plan of action. The board members also discussed if the projections of the nutrient management plan was a "sound" science to follow and whether Condition #8 in the letter granting the permit would satisfy the lack of acreage for spreading. Condition #8 states that if there is not sufficient acreage, the facility operator must obtain additional agreements with other landowners to spread manure. There was also discussion on whether the LFSRB needed to see copies of the agreements, and the possibility that agreements could expire. The board members agreed that a nutrient management plan has to be in place for the number of animal units listed in the expansion, and that the plan and land base agreements will change to meet the number of acres needed for manure disposal as the facility expands, with the burden of monitoring placed on the local government. The plan also gives the public assurance that the owner has addressed manure disposal. At this point, the LFSRB took a lunch break.

After lunch, Gaska noted that the Employee Training Plan and Environmental Incident Response Plan were not provided in the application. However, the fact that these items were not in the application process will not be considered as part of the appeal the board is reviewing at today's meeting.

Johnson then recapped the board's discussion prior to the lunch break and then asked Daniels if there was any other focus in this case that the board may want to consider. Daniels commented that the board may want to ask if the law has any other perceived burdens in this case that future applicants may want to consider.

Selk made a motion that the board find the challenge is valid and the decision is reversed because the application does not demonstrate compliance with the nutrient management standards established under Wisconsin Statute 93.90 (2) (a) and ATCP 51.16 (1). Engelbrecht seconded the motion. The motion passed unanimously.

The board then addressed the petitioner's concerns numbered 1-29 to see if additional comment was needed, particularly as guidance for future applicants. The board first discussed concerns numbered 1-25 and concluded that some of the concerns addressed the NRC's 590 standard, which was out of the board's jurisdiction, and others addressed the lack of acreage available so that would have been covered under the board's early motion. Engelbrecht made a motion that the LFSRB not take up the

individual challenges numbered 1-25 in the aggrieved person's statement of position because the board has generally addressed these issues in its first motion. Selk seconded the motion. The motion passed unanimously. The board then discussed the petitioner's concerns numbered 26-29. Topel made a motion that the LFSRB does not have jurisdiction to take up issues numbered 26-29 of the aggrieved person's statement of position since the ordinance is not one adopted as more stringent than state standards under Wisconsin Statute 93.90 (3) (ar). Gaska seconded the motion. The motion passed unanimously.

Daniels stated that the board's proposed decision would be sent to the interested parties in this case. The LFSRB will meet on December 19<sup>th</sup> by teleconference call to review the context of the order containing the board decision, revise it if necessary, and approve it.


#### **Board schedule and future agenda items**

At the December 19<sup>th</sup> meeting, the board will also review their bylaws to see if changes need to be made. Daniels will send out a reminder to the board asking for their suggested bylaw changes prior to the December 19<sup>th</sup> meeting.

#### **Adjourn**

Selk moved to adjourn the meeting, and Engelbrecht seconded the motion. The motion passed. The meeting ended at 1:15 p.m.

Respectfully submitted,

 12.26.08  
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Bob Selk, Secretary Date

Recorder: LP